

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

UNITED STATES OF AMERICA PLAINTIFF

VS. NO. 1:19CR91

TIMOTHY VICKERS DEFENDANT

SENTENCING HEARING

BEFORE HONORABLE SHARION AYCOCK
CHIEF UNITED STATES DISTRICT JUDGE

Oxford, Mississippi
January 28, 2020

APPEARANCES:

For the Government: PAUL D. ROBERTS, Esquire
U.S. Attorney's Office
900 Jefferson Avenue
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For the Defendant: M. SCOTT DAVIS, Esquire
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Court Reporter: PHYLLIS K. McLARTY, RMR, FCRR, CCR #1235
Federal Official Court Reporter
911 Jackson Avenue East
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1 (1:40 P.M.)

2 THE COURT: You may call the case.

3 COURTROOM DEPUTY: The Court calls Case Number
4 1:19CR91, United States of America versus Timothy Vickers.
5 This is a sentencing hearing.

6 THE COURT: Thank you.

7 Paul Roberts, Assistant United States Attorney,
8 represents the government in this proceeding. Scott Davis
9 represents the defendant. Kimberlee Hatter is our probation
10 officer, and she is in the courtroom.

11 So, Mr. Vickers, you're here today for sentencing.
12 Previously, you had entered a plea to Count 1 of the
13 information that you did travel in interstate commerce from
14 Alabama to Mississippi and back to Alabama with the motivating
15 purpose of engaging in illicit sexual conduct with a minor who
16 had not attained 18 years of age, that is, that you traveled
17 with intent to have sexual activity with the minor.

18 So you entered that plea on a previous occasion, and
19 you understand you are here today for sentencing?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: The Court has received a sentencing
22 memorandum as well as some letters that I have -- I have
23 reviewed. And then I note there are a number of persons here
24 in the courtroom, and I'm assuming they're here on Mr. Vickers'
25 behalf?

1 **MR. DAVIS:** Some of them are, Your Honor, yes.

2 **THE COURT:** All right. Do we have representatives
3 from the victim's family?

4 **MR. ROBERTS:** Your Honor, I have the victim and the
5 victim's mother in the courtroom.

6 **THE COURT:** Thank you very much.

7 So, typically, Mr. Vickers, what I would do is give
8 you an opportunity to speak, and then I'll call on Mr. Roberts
9 and back to Mr. Davis.

10 Now, a presentence report was forwarded to Mr. Davis.
11 Did you have an opportunity to review the presentence report
12 with him?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** Mr. Davis, any objections?

15 **MR. DAVIS:** No, Your Honor.

16 **THE COURT:** Mr. Roberts, any objections?

17 **MR. ROBERTS:** There are no objections from the
18 government, Your Honor.

19 **THE COURT:** Okay. Do either of you anticipate calling
20 witnesses?

21 **MR. ROBERTS:** The government does not.

22 **MR. DAVIS:** No, Your Honor.

23 **THE COURT:** Thank you.

24 You may proceed, sir.

25 **THE DEFENDANT:** Your Honor, I am truly, truly sorry

1 for what I did. It is a very -- it was a very heinous and
2 wrong thing to do. I wish -- I regret it every day of my life.
3 I'm going to regret it. And no words can describe how truly
4 sorry I am and how I was in my wrong mindset. The whole time I
5 was drugged up using whatever I could get to try to fill a hole
6 that couldn't be filled, try to live a life that wasn't worth
7 living.

8 I was raised in a pretty good home, in a Christian
9 home, and I decided to not try to live that kind of lifestyle.
10 I tried to live my own way, and my own way of knowledge was not
11 the right way, of course. And if I were -- had been in my
12 right mind, I would have not have -- even crossed my mind to do
13 something like this.

14 I am truly sorry to you and to the family, and I hope
15 one day that you and the family will be able to forgive me
16 because -- to -- to forgive me because it's truly not something
17 I would have done.

18 And I just look forward to the things when I do get
19 out in the world, to become a better person, to be -- to be a
20 builder of society and not a destroyer of it, not somebody that
21 convicts and -- commits crimes, but somebody that can help
22 other people not do something like this in their life, other
23 people who are bound up in everything that they are, and
24 hopefully try to pull them out of the hole that they're in and
25 show them that there is a different way to live.

1 And, hopefully, by the time -- whatever you feel in
2 your heart to give me, Your Honor, that I would do willingly,
3 and that when I get out, I plan to stay on that right road.

4 **THE COURT:** Okay. Thank you.

5 Mr. Roberts.

6 **MR. ROBERTS:** Your Honor, I think the presentence
7 report accurately reflects the events of the case, and I think
8 that the sentencing guideline range for the information is
9 appropriate given the defendant's age and the actions that he
10 undertook, and I would ask the Court to impose a sentence
11 within that range.

12 **THE COURT:** Thank you, sir.

13 Mr. Davis.

14 **MR. DAVIS:** Thank you, Your Honor.

15 Your Honor, Mr. Vickers is a young man who has engaged
16 in some significant soul-searching over the last number of
17 months. I think when he -- when he expresses his remorse here
18 this afternoon he is sincere. He understands the gravity, the
19 magnitude of his conduct, and he knows he can't flip a switch
20 and rewind time and make it go away, but what he can do is put
21 in the effort himself to getting the help that he needs and to
22 doing the right things going forward to try to atone for it.
23 And he will spend the rest of his life essentially trying to
24 atone for it.

25 This is a young man who hasn't always had it easy. He

1 was in special ed going back to when he was in school. He has
2 had -- struggled with different types of mental illness over
3 his years. There have been multiple, in fact, somewhat lengthy
4 inpatient stays at various facilities to try to help him get a
5 handle on not only some struggles with mental illness but some
6 drug use.

7 For a very young man, Mr. Vickers' history of drug use
8 is not great. This is a young man who got off his medications
9 and decided -- had a little bit of rebellious streak and got
10 involved in some bad stuff. He was using drugs. He wasn't in
11 his -- his normal mind, I would say, at the time of all of
12 this, which is not to minimize it by any means. This is a very
13 serious crime, and Mr. Vickers is truly remorseful for his
14 conduct.

15 Now, going forward, Mr. Vickers has got the support of
16 family. He does have his mother, his stepfather -- or his
17 parents. His birth mother, I believe, is here as well, as well
18 as his pastor. This is -- Mr. Vickers is fortunate in some
19 regards, Your Honor. Not everybody who's standing where he's
20 standing has that type of support to lean on. He does. And
21 he's got good-hearted people who really care about him and are
22 willing to do anything they can to help him going forward, and
23 they're going to be there to do that.

24 And Mr. Vickers has not just spent this time while
25 he -- there has been a lot of self-reflection, and he's spent a

1 lot of time sort of processing his own remorse about this. He
2 also has tried to spend some time bettering himself. He's
3 constantly bringing me certificates of his Baptism and meeting
4 with different prayer groups and trying to -- trying to do
5 whatever limited things he can while he's in custody to better
6 himself to get his head and his heart in the right place so
7 that he's got the best opportunity to succeed upon his release.

8 He is a very, very young man, Your Honor. He's
9 23 years old. And the sentencing guidelines call for 63 to
10 78 months, which for somebody that young, really for anybody,
11 that's a pretty lengthy sentence. We're asking the Court to
12 consider a downward variance from the guidelines.

13 I look at Mr. Vickers' situation and think this might
14 be somebody who could benefit from some time in a halfway
15 house, which I have no reason to believe he wouldn't be
16 eligible for that at some point here. His adoptive mother is
17 in Tupelo where he grew up, so he's got that network of support
18 there. And while he's got some work history in the service
19 industry, it's relatively limited, and I wonder if the
20 resources that the halfway house has over there as far as job
21 connections and those kind of things might not be a good thing
22 for him as he eventually makes the transition back to society.

23 Your Honor, I think his head and his heart are in the
24 right place right now. We ask the Court to take those things
25 into account, take into account the letters. And I would

1 particularly draw the Court's attention to the letter from
2 Ms. Kirksey, which I think provides some real insight into who
3 he is and what he's been through -- she's been the main source
4 of support in his life -- and then fashion the most lenient
5 sentence the Court feels is appropriate.

6 Thank you, Your Honor.

7 **THE COURT:** The Court adopts the presentence
8 investigation report without change.

9 No count of conviction carries a mandatory minimum
10 sentence.

11 Mr. Vickers, your guideline offense level is 25 with a
12 criminal history category of II. That does yield an
13 imprisonment guideline sentence of 63 months up to 78 months;
14 supervised release range, 5 years up to life; and 20,000 up to
15 200,000 for a fine. This is a very serious offense.

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** The statute carries a term of imprisonment
18 up to 30 years --

19 **THE DEFENDANT:** Yes, ma'am.

20 **THE COURT:** -- a \$250,000 fine, up to life on
21 supervised release, and a \$100 special assessment.

22 The sentence is within the guideline range, and the
23 difference between the maximum and minimum of the guideline
24 range does not exceed 24 months.

25 Restitution doesn't apply in your case.

1 In imposing sentence, the Court has considered the
2 advisory guideline range, the statutory penalties, and the
3 sentencing factors enumerated in 18 U.S.C., Section 3553(a)(2),
4 which set forth the need for the sentence imposed to reflect
5 the seriousness of the offense, to promote respect for the law,
6 and provide just punishment; to afford adequate deterrence to
7 criminal conduct; to protect the public; to provide you with
8 educational or vocational training, medical care, or other
9 correctional treatment; and to avoid unwarranted sentencing
10 disparities.

11 The Court finds no reason to depart from the sentence
12 called for by the application of the guidelines insomuch as the
13 facts as found are the kind contemplated by the sentencing
14 commission.

15 Pursuant to the Sentencing Reform Act of 1984,
16 Mr. Vickers is hereby committed to the custody of the Bureau of
17 Prisons to be imprisoned for a term of 63 months on Count 1 of
18 the information. Upon release, the defendant shall be placed
19 on 5 years' supervised release on Count 1 of the information.

20 There are a number of conditions that you must comply
21 with.

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** You must cooperate in the collection of
24 DNA as directed by your probation officer. And you must comply
25 with the requirements of the Sex Offender Registration and

1 Notification Act as directed by your probation officer, the
2 Bureau of Prisons, or any state offender registry agency where
3 you live, work, where you're a student, or where convicted of a
4 qualifying offense.

5 So I want to ask you to respond to me regarding this
6 mandatory condition. Do you understand you must register?

7 **THE DEFENDANT:** Yes, ma'am.

8 **THE COURT:** And do you understand that your failure to
9 register may result in additional felony convictions of failing
10 to register?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** It's amazing to me how many people don't
13 register. They can. They have the ability. They know they
14 must, and they choose not to, and they end up back here. You
15 must register.

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** There are a number of standard conditions
18 that you're going to be subject to once you're released from
19 prison. I'm not going to read those to you at this time other
20 than to tell you you must comply with all of them. They'll be
21 explained to you by your probation officer upon release. You
22 will read and sign and acknowledge that you understand those.

23 Do you understand?

24 **THE DEFENDANT:** Yes, ma'am.

25 **THE COURT:** In addition, you must participate in a

1 program of testing and treatment for substance abuse. Now, the
2 details of this is going to be overseen by your probation
3 officer. You'll stay in that program for testing and treatment
4 until your officer is of the opinion that you no longer need
5 the treatment while -- the 5 years that you're on supervised
6 release.

7 You're also going to be required to participate in a
8 program of mental health treatment. This may be mental health
9 treatment that has as a component sex therapy or the matters of
10 just -- to make sure that, given the nature of this offense,
11 this does not ever happen again. So you're going to remain in
12 that program until your probation officer releases you and
13 believes that you're at a place where you no longer need it.

14 You shall submit your person, property, house,
15 residence, vehicle, papers, computer, office, data storage
16 devices, your phone. These things are subject to a search
17 conducted by a United States Probation Officer. This search is
18 only going to take place if the officer believes -- has
19 reasonable suspicion to believe that you have violated a term
20 or condition of your supervised release, only at a reasonable
21 time and in a reasonable manner, but whomever you're living
22 with must be notified that you're subject to this search.

23 Understand?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** So there are a number of things relating

1 to the nature of this offense. You shall comply with all
2 federal and state sex offender regulations in the states where
3 you reside, where you work, where you are a student, or where
4 you travel. That's every day of every moment you're registered
5 somewhere.

6 You shall participate in a sex offender treatment
7 program under the administrative supervision of the probation
8 officer until you are successfully discharged. While
9 participating in this treatment, you will abide by all of the
10 rules and regulations. Your failure to do so could result in
11 you being revoked and sent back to prison.

12 You shall be required to submit to a polygraph
13 examination, meaning that you can be asked by your probation
14 officer to submit to a polygraph. It's not used to revoke you.
15 It is used to modify conditions, which may indicate that you
16 need additional treatment. And so that's the nature of -- of
17 why a polygraph examination is required.

18 You shall not possess or use a computer or other
19 internet-connected device to access the internet except with
20 the prior approval of your probation officer. You could have
21 access to a computer if it involved your authorized
22 pre-approved employment. The nature of this charge is that you
23 used a device or devices. You cannot have access or own or
24 possess a device without the prior approval of your probation
25 officer.

1 Do you understand that?

2 **THE DEFENDANT:** Yes, ma'am.

3 **THE COURT:** You shall provide the probation officer
4 with access to any requested financial information. The
5 purpose of that is to verify that you're not spending any money
6 to connect to the internet, that no payments or money is going
7 to enable you to have access to computer devices.

8 The defendant shall consent to third-party disclosure
9 to any employer or potential employer if it involves -- if the
10 use -- if the work would involve the use of a computer. So you
11 need to understand that we want you to have employment once you
12 get out of prison, but working with your probation officer,
13 your probation officer will contact your employer and make sure
14 they understand that, at the place of employment, you cannot
15 have access to any inappropriate materials. There will be
16 restrictions placed on that computer.

17 Understand?

18 **THE DEFENDANT:** Yes, ma'am.

19 **THE COURT:** You shall be required to submit to
20 periodic, unannounced examinations of the computer system,
21 computer-related devices, which may include retrieval and
22 copying of the memory from the hardware or software or the
23 removal of such system.

24 Understand, Mr. Vickers, that you're being closely
25 monitored, so they can require you to produce the hardware, the

1 computer itself, the software that's being used. You can also
2 be asked to provide all of the passwords or access codes to
3 both access the internet and access the computer. So you're
4 expected to comply with all of those terms and regulations.

5 Understand?

6 **THE DEFENDANT:** Yes, ma'am.

7 **THE COURT:** If in doubt, ask your probation officer
8 first.

9 **THE DEFENDANT:** Okay.

10 **THE COURT:** You shall allow the probation officer
11 access to review any photographs or video recordings that you
12 may possess, whether it be on your phone, on a computer. If
13 it's on a device, you could be asked to -- for the probation
14 officer to see that.

15 With the exception of unanticipated or incidental
16 contact, you shall have no direct, unsupervised contact,
17 whether that be by letters, correspondence, telephone,
18 internet, electronic communications, or through a third party,
19 with children under the age of 18 -- and that simply is
20 addressing the age of this victim in this case being
21 substantially under the age of 18 -- except in the presence of
22 an adult who has been pre-approved by the probation officer.

23 Understand?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** You shall not frequent, access, or loiter

1 near school grounds, parks, arcades, playground. Anyplace
2 where minor children might congregate, be, stay, play, you
3 cannot, without the prior approval of your probation officer,
4 be at that location. What you have to do is be smart enough to
5 avoid those locations.

6 Understand?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** You shall have no contact with this
9 victim, none whatsoever, ever, in any form or fashion, not in
10 writing, not electronically, not through a third party or
11 through friends. There is -- you are to have no contact with
12 this victim. Am I clear?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** If any contact occurs, you shall
15 immediately leave the area of the contact. And hear me. If
16 you have contact, you must report it to the probation officer.
17 Here's how to avoid that. Do not have any contact in any form
18 or fashion with this victim. Clear?

19 **THE DEFENDANT:** Yes, ma'am.

20 **THE COURT:** The defendant shall not possess or peruse
21 any authentic, altered, or manufactured visual or auditory
22 material, including but not limited to photographs or digital
23 images, drawings, writings, videos, sound recordings of any
24 scene or anything that depicts or describes sexually explicit
25 conduct or child pornography. You're prohibited from accessing

1 that. Clear?

2 **THE DEFENDANT:** Yes, ma'am.

3 **THE COURT:** So no fine is being ordered in this case
4 due to your inability to pay. If you have not already paid the
5 \$100 special assessment, you must do so immediately.

6 At this time, I'm going to advise you of your right to
7 appeal. You have the right to appeal any sentence imposed
8 illegally or as a result of a miscalculation of the guidelines
9 or one that you think is outside the guideline range or one
10 that you think is plainly unreasonable. If you wish to appeal,
11 you may ask for the court costs to be waived. If you cannot
12 afford an attorney, you can ask the Court to appoint you
13 counsel and one will be appointed for you for purposes of an
14 appeal.

15 Do you understand?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** I'm going over and have gone over these
18 details about the supervised release very carefully. At
19 23 years of age, standing in this courtroom, I understand that
20 you must feel somewhat overwhelmed. That is no excuse for
21 understanding what you can and cannot do.

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** Okay. Mr. Roberts, any matters -- any
24 counts to be dismissed?

25 **MR. ROBERTS:** Your Honor, pursuant to the plea

1 agreement, the government would move to dismiss Counts 1 and 2
2 of the indictment.

3 **THE COURT:** They shall be dismissed.

4 Mr. Davis?

5 **MR. DAVIS:** Thank you, Your Honor. One final matter
6 with regard to the time Mr. Vickers has already served.

7 **THE COURT:** Okay.

8 **MR. DAVIS:** Mr. Vickers has been in custody since the
9 day of his arrest, which was June 7th. He was initially in the
10 custody of the state authorities in Alabama and came over to
11 make his initial appearance about a month later.

12 **THE COURT:** Okay.

13 **MR. DAVIS:** He has remained in the primary custody of
14 the State of Alabama this whole time as a result of that, even
15 though the marshals have borrowed him for now. Our
16 expectation, frankly, is that those state charges are probably
17 going to be dropped at this point.

18 **THE COURT:** I see.

19 **MR. DAVIS:** And that state charge that he was arrested
20 on is directly relevant to what we're dealing with here, and
21 so, that being the case, I think the guidelines suggest that he
22 should get credit for that time, and we would ask the Court to
23 give him credit for the time since the day of his arrest on
24 June 7th.

25 **THE COURT:** I saw in the presentence that this is a

1 pending charge in Alabama. That's the charge you're referring
2 to? Was he -- was he incarcerated for any other reason other
3 than this charge?

4 **MR. DAVIS:** Not that I'm aware of, Your Honor, no.

5 **MR. ROBERTS:** Not that I'm aware of either.

6 **THE COURT:** Mr. Roberts, do you have any objection to
7 him receiving credit for the time that he served in the state
8 facility?

9 **MR. ROBERTS:** No, I think that's appropriate.

10 **THE COURT:** Okay. You will be given credit -- I will
11 recommend that you be given credit by the Bureau of Prisons for
12 that time that you spent in state custody regarding this
13 charge.

14 **THE DEFENDANT:** Thank you so much, Your Honor.

15 **THE COURT:** Any other matters, Mr. Davis?

16 **MR. DAVIS:** No, Your Honor. Thank you.

17 **THE COURT:** Okay. Thank you, Counselors.

18 **MR. ROBERTS:** Thank you, Your Honor.

19 (CONCLUDED AT 2:05 P.M.)
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CERTIFICATE

I, Phyllis K. McLarty, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of Mississippi, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing 18 pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Witness my hand, this 26th day of March, 2020.

/s/ Phyllis K. McLarty
PHYLLIS K. McLARTY, RMR, FCRR, CCR #1235
Federal Official Court Reporter